EMPLOYERS' LIABILITY: SCOPE OF STATE AND FEDERAL ACTS.—The California courts in the case of *Smith v. The Industrial Accident Commission of the State of California*[1] were compelled to determine the applicability of the federal Employers' Liability Act[2] and the Workmen's Compensation Insurance and Safety Act of California.[3] The petitioner in that case was employed by the Southern Pacific Company as a special yard officer, part of his duties consisting in preventing trespassers from boarding trains. On the occasion in question he discovered three vagrants riding the "blind baggage" on an interstate train, and while pursuing them across the yard he was wounded by the accidental discharge of his revolver. The petitioner applied for compensation under the state act, but it was held: (1) that at the time of his injury he was engaged in work directly relating to interstate commerce; (2) that if he were entitled to compensation, it would be by virtue of the federal act, that act being supreme in its sphere. Both of these holdings seem correct.

Congress in the first employers' liability act[4] went beyond its field and encroached upon the preserves of the states. That act was held unconstitutional[5] because it was addressed to all common carriers engaged in interstate commerce, imposing a liability upon them in favor of any of their employees although both the carrier and the employee might have been at the time of the injury engaged in purely intrastate commerce. In the present act congress has proceeded with greater caution, and probably has not occupied the entire field allotted to it by the "commerce clause". The act is expressly limited to cases of injuries by carriers engaged in interstate commerce to employees while engaged in such commerce.[6] As the test is the character of the employment at the time of the injury, it is evident that with certain classes of employees, the nature of their occupation changes many times each day. Thus the yard policeman, as in the present case, drives trespassers from both "through" and "local" trains; yard clerks check the numbers of cars engaged in interstate as well as

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carriage within meaning of statute granting toll right. Geiger v. Turnpike Road (1895), 167 Pa. St. 582, 31 Atl. 918. But see Murfin v. Detroit etc. Co. (1897), 113 Mich. 675, 71 N. W. 1108, 67 Am. St. Rep. 489. Bicycle not a "wagon" within Minnesota exemption statute. Shadewald v. Phillips (1898), 72 Minn. 520, 75 N. W. 717.

[1] (Feb. 16, 1915), 20 Cal. App. Dec. 284, 147 Pac. 600.

[2] (1908), 35 U. S. Stats. at L. 65; U. S. Comp. Stats. Supp. 1911, p. 1322, Fed. Stats. Ann. 1909 Supp. 584.

[3] 1913 Stats. Cal. 279.

[4] (1906), 34 U. S. Stats, at L. 232, U. S. Comp. Stats. Supp. 1907, p. 891, Fed. Stats. Ann. Supp. 1907, 68.

[5] The Employers' Liability Cases (1908), 207 U. S. 463, 52 L. Ed. 297, 28 Sup. Ct. Rep. 141.

[6] North Carolina R. R. Co. v. Zachary (1914), 232 U. S. 248, 34 Sup. Ct. Rep. 305.

intrastate transportation;[7] and switching crews handle both kinds of traffic.[8] In the case of Illinois Central Railroad Company v. Behrens[9] it was intimated that as there was such practical difficulty in separating the general work of a switching crew, the liability of the carrier for injuries suffered by a member of the crew in the course of its general work was subject to regulation by congress.

As to the second point in the instant case—that the federal act is paramount and exclusive in its sphere. Previous to the enactment of the federal act a number of states had passed statutes fixing the liability of employers for injuries to employees. These acts were uniformly declared valid by the courts,[10] though they applied alike to those engaged in interstate and intrastate commerce. Employers' liability, though directly connected with the regulation of interstate commerce, has been considered as one of those matters admitting of diversity of treatment according to the special requirements of local conditions, and not as a matter requiring a national and uniform system of regulation. The states may therefore act within their respective jurisdictions until congress sees fit to act. But when congress does act it overrides all conflicting legislation, and the laws of the states, in so far as they cover the same field, are superseded.[11] It is immaterial that the federal act was passed before the state act in California. Congress having spoken, the state act is limited as regards commerce to those occupations which are of an intrastate character.

E. J. S.

EVIDENCE: DEATH BY WRONGFUL ACT: MITIGATION OF DAMAGES.—At common law there was no right of action against a wrongdoer whose negligence caused the death of a person.[1] But in 1846 the increasing prevalence of accidents caused by the introduction of machinery brought about a change in public sentiment. The abhorrence of placing a money price on the life of a human being had long held back remedial legislation. The cold blooded attitude of wrongdoers illustrated in the statement that it is cheaper

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[7] St. Louis, S. F. & Tex. Ry. Co. v. Seale (1913), 229 U. S. 156, 57 L. Ed. 1129, 33 Sup. Ct. Rep. 651.

[8] Illinois Cent. Ry. Co. v. Behrens (1914), 233 U. S. 473, 34 Sup. Ct. Rep. 646. See also Pedersen v. Del., Lack. & West. R. R. Co. (1913), 229 U. S. 146, 57 L. Ed. 1125, 33 Sup. Ct. Rep. 648.

[9] (1914), 233 U. S. 473, 34 Sup. Ct. Rep. 646.

[10] Missouri Pac. Ry. Co. v. Castle (1909), 172 Fed. 841.

[11] Erie R. R. Co. v. New York (1914), 233 U. S. 671, 34 Sup. Ct. Rep. 756; Chicago, R. I. and Pac. Ry. Co. v. Hardwick Farmers Elevator Co. (1913), 226 U. S. 426, 57 L. Ed. 284, 33 Sup. Ct. Rep. 174; Mondou v. N. Y., N. H. & H. R. R. Co. (Second Employers' Liability Cases) (1912), 223 U. S. 1, 56 L. Ed. 327, 32 Sup. Ct. Rep. 169.

[1] 21 Halsbury, Laws of England, 454; 1 Shearman & Redfield on Negligence, 6th ed., 321, §§ 124 ff.